

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**PAY AND SAVE, INC.<sup>1</sup>**

**Employer**

**and**

**Case 28-RC-6282**

**UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 1564, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

The Petitioner, by its amended petition, seeks an election in a unit comprised of all meatcutters and meatwrappers employed by the Employer at its facility located 1700 Saint Michael's Drive in Santa Fe, New Mexico, herein called the Employer's Santa Fe store, but excluding all other employees, including other food store employees, guards, watchmen, professional employees, and supervisors as defined in the Act. The petitioned-for unit is comprised of about eight employees. Contrary to the Petitioner, the Employer contends that the only appropriate unit is a store-wide unit comprised of all of the Employer's Santa Fe store employees. The Employer's proposed unit would include about 75 employees. The Employer further contends, in the alternative, that should I find that a smaller than store-wide unit is appropriate, the smallest appropriate unit would consist of meatcutters and meatwrappers, as well as deli employees. This alternative unit urged by the Employer would be comprised of approximately 11 employees. Based on the reasons set forth more fully below, I find that the unit sought by the Petitioner and limited to meatcutters and meatwrappers is appropriate, because they share a sufficiently distinct community of interest to warrant placement in a separate unit from the other store employees and from the deli employees.

**DECISION**

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

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<sup>1</sup> The name of the Employer appears as corrected at hearing.

2. **Jurisdiction:** The parties stipulated that the Employer, Pay and Save, Inc., a Texas corporation with an office and place of business in Santa Fe, New Mexico, is engaged in the retail sale of groceries and related products. During the 12-month period preceding the hearing in this matter, the Employer, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000. During the same period, the Employer purchased and received at its Santa Fe store goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of New Mexico. The Employer is engaged in commerce within the meaning of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.

3. **Claim of Representation:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. **Unit Finding:** The primary issue presented in this case is whether a unit comprised of all meatcutter and meatwrapper employees employed by the Employer at its Santa Fe store is an appropriate unit, or whether the only appropriate unit is a wall-to-wall unit of the Employer's employees employed at its Santa Fe store or one which also includes deli employees. To provide a context for my discussion of these issues, I will present the record facts regarding the Employer's organization and supervision, physical plant and operating procedures, employees' hours, wages, benefits, and other conditions of employment, the operations of the Employer's market department which include the meat and deli operations, the relevant case law, and my conclusions. At the outset I note that there is no collective-bargaining history at the Santa Fe store.

#### **A. The Employer's Organization and Supervisory Hierarchy**

The Employer operates over 60 grocery stores, including its Santa Fe store. There are approximately 75 employees employed by the Employer at the Santa Fe store. Approximately 20 of these are part-time employees who usually work either four or six-hour shifts. Manuel Hinojos, the store manager, is responsible for the overall operation of the store. The store manager spends most of his time walking around the store making sure that the store is functioning properly. The store manager does all of the hiring and firing. Reporting to the store manager is an assistant manager, a second assistant manager, the meat manager, and the produce manager. The parties stipulated, the record shows, and I find, that the store manager, two assistant store managers, the meat market manager, and the produce manager are supervisors of the Employer within the meaning of Section 2(11) of the Act.

The Employer's Santa Fe store is comprised of several departments and specialty areas. Employees working in the Employer's grocery department include checkers, baggers (also called sackers), stockers, scanners, and back-door receivers. These employees report to the store's assistant manager, Sandy Zamora. Employees working in the floral department

and bakery report directly to the store manager. There are about four bakery clerks and one floral clerk. Employees working in the Employer's "market department" include meatcutters and meatwrappers in the meat department, as well as deli clerks in the deli. These employees report to the Employer's meat manager, Arturo Salazar. There are approximately five employees in the produce department. These employees, the produce clerks, report to the produce manager, Maricio Mena. Labor costs are tracked by department. Specifically, labor costs are tracked separately for the meat department, the deli, grocery, and by department throughout the store.

## **B. The Employer's Physical Plant and Operating Procedures**

The Santa Fe store is laid out with check stands in the front, non-selling areas in the rear, and aisles and other selling areas on the selling floor. Specifically, the Santa Fe store has 9 check stands in the front of the store and 15 aisles on the selling floor. There are separate areas within the store for liquor, dairy, floral, meat, bakery, deli, and produce. In addition, in the rear of the store there are non-selling areas, including vaults, a meat cooler, a frozen food cooler, a dairy cooler, a deli cooler, and a floral cooler.

With regard to the meat and deli operations, there are separate coolers for the deli and the meat department. The meat department's cooler is accessible only through the meat-cutting area in the meat department. With the exception of the occasional storage of chickens used by the deli, only meat department meats are kept in the meat cooler. Meat used by meatcutters and meatwrappers is not stored in the deli cooler. There is also a small holding cooler used to store lunchmeats and cheeses for the deli. This holding cooler is located near a meat cooler and is approximately 75 feet from the deli department. There is also a cooler behind the deli department and another for frozen items in the bakery department. The deli department is located approximately 15 to 30 feet from the meat department. The employee break room and the manager's office are located between the meat market and the deli. The meat department's cutting room is used only by meatcutters and meatwrappers.

The Employer's Santa Fe store orders and receives goods, which are in turn distributed to the various departments for sale to customers. Specifically, managers and certain employees from throughout the Santa Fe store order products for their respective departments. Orders are placed, by computer, with a central distribution center located in Texas. In determining their orders, the respective managers and other personnel take into consideration the products that will be offered at special prices during the coming week by referring to the Employer's ad planners. Ad planners are the weekly advertising supplements in which the Employer advertises its product specials available throughout the store. Orders are made by the produce manager, a grocery stocker, the meat manager, a dairy stocker, a frozen foods stocker, and the floral clerk. The meat manager determines the meat and cheese products to be ordered for the meat department based on his personal observations, as well as input received from meatcutters and meatwrappers. A deli clerk determines the meat, cheese, and other products needed by the deli, and then gives such information to the meat manager, who in turn transmits such orders by computer to the distribution center.

Four days per week, perishable products are delivered to the Santa Fe store by truck. In addition, three mornings each week other trucks containing non-perishable goods arrive at the Santa Fe store. Three grocery stocker employees unload all of the products for the entire store. The back-door receiver and scanner employee checks the product for shortages and damage. This employee also scans all of the product into the store. Damaged goods, and goods that do not scan properly, are placed back on the trucks and returned to the distribution warehouse. The back-door receiver advises the applicable department head or stocker when damaged products are returned to the distribution center.

Once the various products are received in the Santa Fe store, the various stockers from throughout the store take such goods to their respective departments and areas. For example, meat products are taken to the meat cooler, produce is taken to the produce department, and deli goods are taken to the deli. Once the products are delivered to the respective areas around the store, a particular department's employees may handle such products in order to prepare them for sale to customers.

Customers who return products, for whatever reason, do so at the service desk at the front of the store. The service counter is staffed by front-end managers, assistant managers, or the store manager.

Employees throughout the store clean in and around their respective work areas. For example, cashiers clean around their check stands and the glass on UPC scanners. Sackers clean around the front doors and the front of the store. In the meat department, a meatwrapper cleans the slicer, tenderizer, and saws, as well as the meat cooler, and throws boxes into the trash. Deli clerks clean around the deli area, including the deli slicers, rotisserie machine, the floor, display cases, and the deli cooler. Similarly, the produce and dairy clerks clean their respective areas. The floors are cleaned at night by an outside cleaning service.

### **C. Employees' Hours, Wages, Benefits, and Conditions of Employment**

The Employer's employees work varying shifts consisting of hours before, during, and after the store's business hours. The Santa Fe store is open for business from 8:00 a.m. to 9:00 p.m., seven days per week. The store does most of its business during the hours of 3:00 to 9:00 p.m. Saturday, Sunday, and Monday are the busiest days of the week. Full-time employees work five 8-hour shifts per week with a half-hour paid lunch period. Certain employees, including a receiver, a produce clerk, three grocery clerks, and two bakery clerks, start work at 4:00 a.m. An additional produce clerk starts work at 5:00 a.m. Certain meatcutters and meatwrappers, as well as the produce manager and scanner employee, start work at 6:00 a.m. These employees' shifts end at 2:00 p.m. The store manager and the meat manager start work between 6:30 and 7:00 p.m. All employees use the same time clock. Other employees work other shifts starting at various times throughout the day. For example, a deli clerk starts a shift at either 1:00 or 3:00 p.m., and an employee classified as a meatwrapper starts a shift at 3:00 p.m. in the meat market. While classified as a meatwrapper, this person's job consists primarily of cleaning in the meat department, including the various

tools and saws used by meatcutters. The record also shows that there is at least one meatcutter on duty for all but one hour per day of the store's operation.

The wage rates of employees vary depending on classification and experience. Checker employees earn between \$5.00 and \$10.00 per hour. Baggers earn between \$5.50 and \$9.00 per hour. The pay for stockers, deli clerks, meatwrappers, produce clerks, and bakery clerks all start at \$7.00 per hour. These employees' pay ranges go to between \$8.00 and \$13.00 per hour. The pay range for meatcutters start at \$9.00 and goes to \$15.00, the highest in the store. The highest paid deli clerk earns \$9.00 per hour, while the lowest paid meatcutter is paid \$9.00 per hour. The second assistant manager earns \$11.00 per hour, and the produce manager earns \$15.00 per hour.

All employees use the same entrance to come to and depart from work. There is one break room where most employees eat their lunches.

The Employer maintains a dress code under which most employees wear either a white collared shirt or a shirt with a logo and nametag. Employees may choose to wear shirts with logos, which come in a number of colors. In addition, bakery employees use white aprons, while deli employees use red aprons and stockers wear black aprons. Meatcutters and meatwrappers wear white smocks. No other employees wear smocks.

All employees complete the same application and are hired by the store manager. The Employer does not have written job descriptions, nor does the Employer use written employee evaluations.

The Employer's "teammate" handbook is given to each employee when they are hired. Almost all of the terms of the handbook, including those dealing with benefits, conduct, discipline, and corporate policies, apply to all of the Employer's employees employed at the Santa Fe store, though some benefits are premised on full-time status. Employees do not receive bonuses. There is a separate part of the handbook dealing with meat department safety which is not applicable to employees in other areas of the store.

The Employer provides on-the-job training for its employees. There are no apprenticeship programs in place at the Santa Fe store.

#### **D. The Employer's Market Department**

The Employer's market department consists of meat department employees, including meatcutters and meatwrappers, and deli employees, including deli clerks. With regard to supervision, Meat Manager Arturo Salazar supervises all employees of the market department, including meatcutters, meatwrappers, and deli clerks. However, all hiring and firing, as well as the determination of discipline, is done by the store manager. Specifically, in instances of discipline, Salazar would report work performance and discipline issues involving meatcutters, meatwrappers, and deli clerks to the store manager, who then determines the discipline that should be issued, if any.

The record shows that the meat department and deli department employees do not work side by side; have very limited contacts with each other; and possess and utilize distinct skills and tools.

## **1. Meat Department Employees**

Meatcutters and meatwrappers work side by side and apart from other employees during most of their work time. The primary responsibility of meatcutters and meatwrappers is to process meat, including red meat, pork, lamb, and chicken, from the Employer's meat cooler to the display cases.

Meat is delivered to the meat department in labeled boxes stacked on pallets. The meat sold in the meat department initially comes to the store as boxed beef or as chubs of ground beef. The boxed beef comes as "primals," which is beef that has been seamed but not yet cut into retail cuts of beef. In order to be prepared for retail sale, primals must be trimmed, squared, faced and then cut. Primals are stored in the meat department cooler. The Santa Fe store does not obtain meat in the form of carcasses or subprimals. Pork products arrive at the store packed four pork loins to a box or eight pork butts to a box. Meatcutters cut the loins into a variety of chops and roasts, while the pork butts are trimmed and squared by the meatcutters.

Every day in the meat market, the meat manager or a meatcutter prepares a cut list, which is a list of what meats and cuts need to be prepared on that particular day. No cut lists or similar lists are prepared or used in the deli. Cutters and wrappers pull the required boxes of meat from the meat coolers. Meatcutters then cut the primals and subprimals down to various retail meat cuts called for by the cut list. Meatwrappers and, on occasion as needed, meatcutters, then wrap and price the meat cuts by using a belted wrapping machine. Meatcutters will assist meatwrappers with wrapping meat when meatwrappers fall behind. Meatwrappers then bring the wrapped cuts to, and stock them into, the display cases.

Ground beef comes into the store already somewhat ground, but it must nonetheless be run through the meat department's grinder. Meatcutters and some meatwrappers operate the machine that grinds the beef.

Some poultry that is sold by the Employer comes into the store case-ready, meaning that they may be wrapped and priced without the need for additional cutting. Some chicken products, such as leg quarters, may be cut by meatcutters and then wrapped into retail packages. Only rarely does a meatcutter perform any cut-to-order work for a customer.

Meatwrappers, and sometimes meatcutters, also check the products that they prepare and place into the meat display cases for correct dates, leaks, spoilage, and package tears. Meatwrappers are also responsible for taking care of the meat cases, including the stocking and cleaning of such cases. Meatwrappers also assist by scraping and cutting pork chops, grinding hamburger, and cutting, wrapping, and pricing cheese.

With regard to cheese, the meat market and deli department use and handle different cheeses. Deli cheeses are displayed in the deli case and are sliced by deli clerks as ordered by customers. The meat market orders different bulk cheeses. These cheeses are cut and wrapped by meat market employees and are then placed in the meat market's display cases.

The Employer schedules a meatwrapper to clean the meat market seven nights a week. Such cleaning includes cleaning the meat department as well as the meat machines. The cleaning of machines, such as saws and the tenderizer, requires training. On occasion, when the evening meatwrapper (cleaning) employee is not at work, a grocery stocker is assigned to clean the meat market. All meatcutters and meatwrappers currently work full time. Employees in other departments work either full time or part time.

## **2. Deli Employees**

Deli employees typically stock the deli case with lunch meats and cheeses, wait on customers, fill the fish case, display shrimp and salads, and process rotisserie chickens. Deli clerks, as well as a particular grocery clerk, determine when deli products must be replenished in the deli case.

Fish products are not handled by the meat department; rather, they are stored, handled, and sold through the deli department. Fish comes in frozen and is taken out of the box by deli clerks and displayed on ice in the deli counter. Similarly, shrimp arrive frozen and are either displayed in a frozen product case or are opened and sold by deli clerks in the deli department.

Deli clerks are not required to possess the specialized knowledge required of meatcutters and meatwrappers, such as knowing and being able to identify a variety of meat cuts. While deli clerks slice lunch meats to customer order, they do not cut retail meat cuts. Deli clerks are not trained to wrap or cut meat in the meat market. The record shows that deli clerks do not perform meatcutters' duties or work in the meat department. Only when there is no meatcutter or meatwrapper in the meat department does a deli clerk go into the meat department to assist a customer. This happens rarely, and the assistance rendered to a customer is not of the type that would require exercise of meat cutting expertise. While there may be an occasion when another employee may assist with the cleaning of the meat department, no one other than meatcutters and meatwrappers cut and wrap meat in the Employer's Santa Fe store meat department.

With regard to the supervision of deli clerks, all hiring and firing is done by the store manager. Meat Manager Salazar reports work performance and discipline issues involving meatcutters, meatwrappers, and deli clerks, to the store manager, who then determines the discipline that should be issued, if any.

## **3. Contacts Between Meat and Deli Employees**

There is limited contact between the meat department employees and deli clerks. The meat and deli products are stored separately, and are handled separately by employees in the

respective departments. There are limited exceptions. For example, the meat used for carne adovada, a product sold in the deli, is actually cut by meat department employees using knives that are not maintained in the deli department. After the diced pork cushion meat used for carne adovada is cut, it is delivered to the deli where it is seasoned and further prepared by deli clerks. In addition, when the deli needs rotisserie chickens, a meat department employee may deliver the chickens to the deli where the deli clerk seasons and prepares the product. During the normal course of work, meat department employees do not have routine contact with employees from other departments, such as grocery departments or the produce department.

There are separate schedules for both the deli clerks and meat market employees.

#### **4. Tools and Equipment**

The meat and deli areas use separate and distinct equipment and tools. Many of the tools used by meatcutters and meatwrappers at the Santa Fe store are found only in the meat department. For example, meatcutters are issued two knives by the Employer that are for use in the meat market--a boning knife and a steak knife. At least one meatcutter also uses additional knives, including a breaking knife. Knives are used by the respective meatcutters and carried in their scabbards. These knives are unlike those used in any other area of the store, and such knives are not used in the deli.

The meat market also has two special saws. One is a boneless saw and the other is a bone-in saw. Both of these saws require specialized training and are very dangerous tools. These saws are used by meatcutters, and on occasion a meatwrapper may use such a saw. In such limited instances, the meatwrapper may use the saw to split a rib or complete some other simple procedure. Similar saws are not used in the deli. There is a meat tenderizer in the meat market that is used by the meatcutter and meatwrappers, including the meatwrapper that cleans at night. One of the scales used in the meat department, which is longer than other scales found in other areas of the store, is unique to the meat market and unlike those used in the deli. Meat department employees also use special protective gear, such as wire mesh steel gloves. Other departments do not use such protective gear.

#### **5. Training**

Meatcutters employees possess and exercise skills that are not used in other areas of the Santa Fe store. Meatcutters must know how to prepare numerous retail cuts of meat from primals that are delivered to the store. In doing so, they utilize skills and tools that are unique to the meat department. The current meatcutters employed at the Santa Fe store have varied lengths of experience and training as meatcutters. Joe Garcia, a meatcutter, has worked for the Employer at the Santa Fe store for approximately three years, but has worked as a meatcutter in the industry for approximately 18 years and has extensive experience and training, including a 3-year apprenticeship program.

Once employed, meatcutters receive ongoing training from Meat Manager Salazar or meatcutter Garcia. At the time of the hearing, Adrian Ruiz Perez had been a meatcutter at the



Santa Fe store for over two years, while Ignacio Vasquez had been a meatcutter there for only a few months. At the Santa Fe store, skills used in cutting and breaking down primals, as well as in preparing cuts of beef, pork, and lamb, are taught to meatcutters. It takes a period of approximately six months to a year for a meatcutter to learn the skills necessary to work independently at the Santa Fe store. Meatcutter Vasquez, who has only been employed as a meatcutter for a few months, is not yet working independently. He does not yet use the saws and is not yet being taught how to prepare a cut list.

The skills required of a meatcutter at the Santa Fe store include knowing how to cut relative to grains in the beef so that proper cuts result and to avoid ruining the meat; how to use meat cutting tools; and how to prepare approximately 20 cuts of beef from primals in a manner that is presentable to the customer. With regard to pork, a meatcutter must possess skills to allow him or her to prepare an additional approximately 10 cuts, including by cutting boxed pork loins into a variety of chops and roasts and by trimming pork butts for presentation to customers.

Meatwrappers receive on-the-job training, including training on the proper breakdown and reassembly of the various meat department equipment, such as the saws and tenderizer.

## **6. Interchange and Transfers**

During the approximately two and a half years the Santa Fe store has been in operation, there has been very limited interchange between meat department employees and employees from the other departments. Specifically, during this period, three employees have transferred into the meat department from other areas. Adrian Ruiz Perez was a grocery stocker who transferred into the meat department as a meatcutter. This transfer occurred over two years ago. When he transferred into the meat department, his hourly wage rate was increased from \$7.00 to \$8.00. For several months after being transferred into the meat market, he was not allowed to work unless he was working alongside another meatcutter for training purposes and to insure that he did not ruin meat. Jesus Romero worked as a grocery stocker before transferring into the meat department as a meatwrapper. In addition, in January 2004, employee Ignacio Vasquez transferred to the Santa Fe store from another of the Employer's stores as a meatwrapper. He has since become a meatcutter.

On one occasion during the past approximately three years, one meatwrapper employee was offered hours as a deli clerk during a specific week because hours in the meat department were cut during that particular week.

With regard to transfers out of the meat department or deli positions, employee Erasmo Montiel, who worked as the evening meatwrapper performing meat market cleaning, is currently working in the deli department. His pay rate was not changed when he went to the deli.

Meat market employees do not cover for employees in other departments when such employees call in sick or are otherwise absent.

## E. Legal Analysis and Determination

Section 9(b) of the Act provides that “the Board shall decide in each case whether to assure to employees fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof.” It is well established under Board law that the Act does not require the unit for bargaining be the optimum, or most appropriate unit, but only an appropriate unit. *Home Depot USA*, 331 NLRB 1289, 1290 (2000); *Overnight Transportation Co.*, 322 NLRB 723 (1996). An appropriate unit ensures to employees “the fullest freedom in exercising the rights guaranteed by the Act.” *Morand Brothers Beverage Co.*, 91 NLRB 409 (1950), enfd. 190 F. 2d 576 (7<sup>th</sup> Cir. 1951); *Dinah’s Hotel and Apartments*, 295 NLRB 1100 (1989). A union is not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with the requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1962). Furthermore, in *Pacemaker Mobile Homes*, 194 NLRB 742, 743 (1971), the Board explained that when no other labor organization is seeking a unit larger or smaller than the unit requested by the petitioner, the sole issue to be determined is whether the unit requested by the petitioner is an appropriate unit.

As discussed above, the Petitioner seeks a unit consisting solely of meatcutter and meatwrapper employees which comprise the Employer’s meat department. The Board has traditionally found that employees within a meat department may comprise a presumptively appropriate separate unit; however, such a presumption has been based primarily on the recognition that meat department employees “exercised a broad range of traditional meatcutter skills marking them as craftspeople.” See, e.g., *R-N Market, Inc.*, 190 NLRB 292 (1971); *Big Y Foods, Inc.* 238 NLRB 855 (1978), cited in *Wal-Mart Stores, Inc.*, 328 NLRB 904, fn. 3 (1999). Due to changes in the grocery industry, meatcutters have exercised fewer traditional meatcutting skills, such as cutting carcasses into primal and subprimal parts, and boning, seaming, and trimming meats. *Wal-Mart Stores*, supra, at 904. As a result, the Board, in *Scolari’s Warehouse Markets*, 319 NLRB 153 (1995), determined that employees who work primarily with boxed primal and subprimal meat do not warrant the *presumption* of unit appropriateness traditionally afforded to craft meatcutters.

However, in the same case, the Board also stated that even in the event that the type of work performed by meatcutters is not of the type that would warrant the presumption of a separate unit, a separate meat department unit may nonetheless be appropriate based on community-of-interest factors. In determining whether meat department associates share a distinct community of interest, the Board examines the actual work performed by the meatcutters to determine if the processing of boxed primal and subprimal meats involves “substantial meatcutting skills which are distinct from the skills of other supermarket employees.” *Scolari’s Warehouse Markets*, supra, at 156; see also *Wal-Mart Stores*, supra, at 904, 905. As noted in *Scolari’s Warehouse Markets*, in determining the appropriateness of a separate meat department unit, the Board, in addition to examining the employees’ skills, will examine whether: (1) a substantial portion of the employer’s meat department business involves boxed meat; (2) the continued application of specialized meatcutting skills is necessary for the processing of the boxed meat; (3) the meatcutters are highly trained; (4) a substantial percentage of the unit is engaged in skilled meatcutting work; (5) the unit is

separately supervised; (6) there is limited interchange and transfers between meat department employees and other store personnel; and (7) employees in the proposed meat department unit receive higher wages than other store employees. *Scolari's Warehouse Markets*, supra, at 158. The Board found that such factors outweighed factors such as common benefits and limited skills necessary for handling case-ready meats. *Id.*

Based on the record in the instant matter, I find that the meatcutters employed at the Santa Fe store are not craftspersons of the type to which the Board will apply a presumption of the appropriateness of a separate craft unit. As stated above, the Employer's meatcutters work on boxed meat that comes in primals, not from carcasses. Thus, the Employer's meatcutters, while they continue to possess and use distinct and substantial meatcutting skills, do not exercise the degree of skill upon which the presumption was premised.

I next turn to the consideration of whether the petitioned-for unit is an appropriate unit based on the traditional community-of-interest criteria as described and applied in *Scolari's Warehouse Markets*. In so doing, I have considered the Employer's position that, in the event that a smaller than store-wide unit is found appropriate, such a unit should include the Employer's deli employees. I find, based on the record before me, that the meatcutters and meatwrappers possess different skills, functions, and duties from other employees employed at the Santa Fe store, including deli employees, which warrants a finding that a unit comprised of meatcutters and meatwrappers is an appropriate unit.

In applying traditional community-of-interest standards to the facts of this case, and in particular those discussed by the Board in *Scolari's Warehouse Markets*, I conclude the petitioned-for unit is an appropriate unit for collective bargaining. The skills, methods, and equipment used in the meat department support such a finding. Virtually all of the Employer's meat department business involves meatcutters, working closely with meatwrappers, cutting boxed meat into retail cuts. Doing so requires the exercise of specialized meatcutting skills and expertise that are not required or used by other employees in the Santa Fe store, including deli employees. The specialized skills required in cutting the primals and other meat products into retail cuts require the continued application of specialized meatcutting skills. Specifically, the meatcutters use tools and equipment that are different from other areas of the store, and require substantial training before being allowed to work independently. While the Employer's meatcutters possess varying degrees of skills and experience, the record shows that, at a minimum, several months of training is required before a meatcutter may work without direct supervision. In contrast, deli employees are not required to know or be able to recognize specific retail cuts as are meatcutters and meatwrappers and work with different tools and methods from those used by meat department employees. Moreover, meatwrappers learn to operate certain meat department tools and possess and exercise skills necessary to clean meat department equipment.

The degree of contact between meat department employees and other employees, including deli employees, is very limited. The meat department's work area is distinct and apart from other areas of the store, including the deli. The meat department's cutting area is used exclusively by meat department employees. The limited occasions when a meat department employee is called upon to cut product for the deli or to deliver product to the deli

comprise a very small part of meatcutter or meatwrapper work. The limited occasions when an employee other than a meatwrapper is called upon to clean the meat department, as well as the sporadic occasions when a deli clerk may assist a customer in the meat department, do not support the inclusion of deli employees in a unit consisting of meatcutters and meatwrappers. Similarly, the transfers that have occurred are limited. More important is the fact that in the event an employee transfers into a meatcutter position, his wage is increased and he is required to complete a lengthy, significant period of training to learn the traditional meatcutting skills that are required to work in the meat department.

The degree of common supervision of meat department and deli employees does not support a finding that the deli clerks must be included with the meat department employees. Although the manager of the Employer's market department, Arturo Salazar, supervises both meat department and deli employees, it is the store manager who retains the authority to hire, fire, and discipline employees. Although designated as a manager, Salazar also cuts meat and prepares the meat department's cut list. The nature of Salazar's oversight of the deli department is limited. The record shows that a deli clerk determines which products are needed by the deli and then forwards such information to Salazar who merely inputs such information into the computerized ordering system as a purely ministerial task. Moreover, separate schedules are prepared for both the meat and deli departments.

As was the case in *Scolari's Market Warehouse*, the degree of common benefits does not outweigh other factors that support the finding of a separate unit for meatcutters and meatwrappers. Moreover, although the record establishes that all of the Employer's employees at the Santa Fe store receive the same benefits, the meatcutter employees have the capacity to earn more than any other employee in the store. At least one meatcutter earns more than any other employee, including the store's second assistant manager.

In sum, based on the record before me, I find that the community of interest shared by the employees in the petitioned-for unit, as well as the lack of community of interest between such employees and other employees, including deli employees, warrants a finding that the petitioned-for unit is an appropriate unit. See *Scolari's Warehouse Markets*, supra.

Based upon the foregoing, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and regular part-time meatcutter and meatwrapper employees employed by the Employer in its meat department of its store located at 1700 Saint Michael's Drive in Santa Fe, New Mexico.

**EXCLUDED:** All other employees, including all other store employees, guards and supervisors as defined in the Act.

There are approximately eight employees in the unit found appropriate.

## **DIRECTION OF ELECTION**

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

### **UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1564, AFL-CIO**

## **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within seven (7) days of the date of this Decision, the Employer file with me, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters. I will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, I must receive the list at the NLRB Region 28 Resident Office, 505 Marquette Avenue, NW, Suite 1820, Albuquerque, New Mexico, 87102, on or before June 30, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

## **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in

Washington must receive this request by July 7, 2004. A copy of the request for review should also be served on me.

Dated at Phoenix, Arizona, this 23<sup>rd</sup> day of June 2004.

/s/Cornele A. Overstreet  
Cornele A. Overstreet, Regional Director  
National Labor Relations Board - Region 28